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**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: TLC Systems
File: B-223179.2
Date: August 22, 1986

DIGEST

1. Protest alleging that prior solicitation for fire alarm system should not have been canceled because current solicitation for same item does not differ substantially from previous year's solicitation is untimely since protest was not filed within 10 days of time that protester knew, or should have known, of basis of protest.
2. Contention that procurement should have been conducted by soliciting sealed bids rather than competitive proposals raised after due date for submission of initial proposals is untimely.
3. Protest that awardee's offer was too low will not be considered since the question of whether the awardee is able to provide the goods or services at the price offered is a matter of responsibility which the General Accounting Office will not review except in circumstances not present in this case.
4. Protest that awardee violated the pricing provisions of its separate contract with the General Services Administration (GSA) involves a matter for GSA and does not provide a legal basis to upset the contract award.
5. Whether potential awardee will perform in accordance with the terms of the solicitation is a matter of contract administration which the General Accounting Office will not review.

DECISION

TLC Systems protests the award of a contract to Monaco Enterprises, Inc., under request for proposals (RFP) No. DAKF10-86-R-0034, issued by the U.S. Army, Fort Stewart, Georgia, for the furnishing and installation of a fire alarm system. We dismiss the protest.

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On June 13, 1985, Fort Stewart issued request for quotations (RFQ) DAKF10-85-Q-0030, for a fire alarm system. TLC submitted the low quotation, but the RFQ was canceled because it did not provide for a automatic remote test capability and failed to state specific installation requirements. The current RFP was issued on January 27, 1986 for essentially the same fire alarm system. Monaco's low offer of \$12,210 under the RFP was \$3,244.00 less than its quotation under the 1985 RFQ. Award was made to Monaco on May 21.

TLC maintains that it should have received the award under the 1985 RFQ and argues that the RFQ should not have been canceled. The protester says that the subsequent RFP contained only minor specification changes. TLC also argues that the second procurement should have been accomplished by requesting sealed bids rather than competitive proposals. Further, the protester questions how Monaco's price under the RFP could be lower than its price under the prior solicitation and states that Monaco violated the pricing provision of a contract it holds with the General Services Administration (GSA). Finally, TLC contends that the equipment offered by Monaco does not conform to fire standards developed by the National Fire Protective Association (NFPA), nor was the equipment approved by Underwriters Laboratories (UL) or Factory Mutual (FM) as required by the specifications. It is TLC's view that all these contentions show that the agency intended all along to favor Monaco and make a sole-source award to that firm.

TLC's arguments that the 1985 RFQ should not have been canceled and the resolicitation should have been accomplished by sealed bidding are both untimely and will not be considered. Our Bid Protest Regulations state that protests must be filed not later than 10 working days after the basis of the protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1986). TLC knew the RFQ had been canceled in November 1985 and was aware of the nature of the specification changes incorporated into the RFP in January 1986. Its protest was not filed until May 28, clearly more than 10 days after the basis of this protest contention was known. Its contention regarding the nature of the resolicitation is also untimely because TLC knew from the face of the RFP that the agency had chosen to solicit competitive proposals rather than sealed bids. Protests based upon alleged improprieties in a solicitation, which are apparent prior to the closing date for receipt of initial proposals, must be filed prior to that closing date. 4 C.F.R. § 21.2(a)(2). TLC raised this issue well after the closing date had passed.

TLC argues that Monaco's offer was too low. The submission of a below-cost offer is not illegal and provides no basis for challenging the award of a firm, fixed-price contract to a responsible contractor. ABC Appliance Repair Service, B-221850, Feb. 28, 1986, 86-1 CPD ¶ 215. Our Office does not generally review an offeror's responsibility unless either possible fraud or bad faith is shown on the part of the procuring activity or the solicitation contains definitive responsibility criteria which allegedly have been misapplied. 4 C.F.R. § 21.3(f)(5). Neither exception has been alleged here.

TLC further argues that Monaco's offer under the RFP violated the pricing provisions of its contract with GSA. This is a matter between GSA and Monaco, and does not provide a basis for objecting to the award here. See Sony Industries, B-197300, June 4, 1980, 80-1 CPD ¶ 382.

Finally, the protester says that the equipment offered by Monaco does not conform to standards established by NFPA and is not approved by UL and FM. There is nothing in Monaco's offer to indicate that the firm's equipment will not meet all the specification requirements, and, as indicated above, we will not generally review an agency's determination that an offeror is responsible, that is, that the offeror will meet specification requirements. As to whether the equipment Monaco actually furnished will be in accordance with contract requirements is a matter of contract administration which is the function and responsibility of the agency. 4 C.F.R. § 21.3(f)(1); BUR-TEL Security Protection Systems, B-218829, May 16, 1985, 85-1 CPD ¶ 561.

The protest is dismissed.



Ronald Berger
Deputy Associate
General Counsel